

REMARKS

Claims 1-21 are currently pending in the present application. The allowance of claims 1-10 and 16-20 is gratefully acknowledged. Reconsideration of claims 11-15 is respectfully requested.

REJECTIONS UNDER 35 U.S.C. §103:

Claims 11-15 were rejected under 35 U.S.C. §103(a) as being unpatentable of Lai et al., U.S. Patent No. 5,556,170 in view of Huh et al., U.S. Patent Application Publication No. 2004/0124570. Claim 11 defines a pedestal assembly for supporting a boat seat that comprises a tubular-shaped first pedestal member, a tubular-shaped second pedestal member telescopingly received within the first pedestal member, and a pneumatic cylinder operably coupled to the first pedestal member and the second pedestal member for telescopingly actuating the first pedestal member and the second pedestal member relative to one another. Claim 11 further defines the cylinder as including a cylinder switch that actuates the cylinder by moving the actuator switch in a relatively transverse direction with respect to a longitudinal axis of the cylinder.

It is well established law that in order to find an invention obvious in light of a combination of references, there must be something present in the teaching of those references to suggest the claimed invention to one skilled in the art. *W.L. Gore and Assocs., Inc. v. Garlock, Inc.*, 721 Fed.2d 1540, 1551, 220 U.S.P.Q. 303, 311 (Fed. Circuit 1983) (citing *In re Bergel*, 292 Fed.2d 955, 956-57, 130 U.S.P.Q. 206, 208 (CCPA 1961)). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under §103, teachings of references can be combined only if there is some suggestion or incentive to do. *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of modification. *In re Fritch*, 972 Fed.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Circuit 1992) (citing *In re Gordon*, 733 Fed.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Circuit

1984)). Moreover, the respondent cannot pick and choose among the individual elements of assorted prior art references to recreate the claimed invention as virtually all inventions are necessarily a combination of old elements. *Smith Kline Diagnostics v. Helena Lab. Corp.*, 859 F.2d 878, 887, 8 U.S.P.Q.2d 1468, 1475 (Fed. Circuit 1988). The notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily describe virtually all patents and cannot be the law under the statute, §103. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1575, 1 U.S.P.Q. 2d 1593, 1603 (Fed. Circuit 1987).

Lai et al. discloses a sleeve structure of an office chair wherein the sleeve structure includes a sleeve body in which a pneumatic bar is fitted nearly without clearance existing therebetween. During operation, when the pneumatic bar suffers a load or torque by different inclined angles of the chair, the chair is always stably supported without swinging. In assembly, a steel circular tube 21 and a plurality of fitting members 22 is forcibly fitted into a sleeve hole 12 of a sleeve body 11 and locked by a plurality of stoppers 13. In turn, the pneumatic bar 31 is fitted into the steel circular tube 21 to tightly contact therewith, such that when the pneumatic bar suffers a load by various inclined angles, the sleeve body remains in tight contact with and supports the pneumatic bar. As is clearly illustrated in Fig. 1 of the Lai et al. reference, this particular function may only be completed by the pneumatic cylinder as disclosed by Lai et al. if in fact the pneumatic cylinder is actuated by a linearly-actuated actuator switch. Further, the purpose of the sleeve structure as disclosed by Lai et al. is to stabilize the office chair, and is not to assist in adjusting the overall height of the associated chair. Huh et al. discloses a gas cylinder of a particular arrangement, however, neither Lai et al. nor Huh et al. teach, motivate, or suggest combining that which is taught therein. Moreover, simply placing the gas cylinder as disclosed by Huh et al. into the sleeve structure as disclosed by Lai et al. would require a picking and choosing of particular components from each, as the sleeve structure as disclosed by Lai et al. is in no way configured to accept the pneumatic cylinder as described by Huh et al. therein without significant modification as the movement of a Huh et al. chair would not actuate a Lai et

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al. cylinder. Therefore, neither Lai et al. nor Huh et al., nor the combination thereof disclose that which is defined in claim 11.


Accordingly, claim 11 is in condition for allowance. Claims 12-15 are in condition for allowance as they depend from claim 11 which is condition for allowance.

Accordingly, claims 1-21 are in condition for allowance and a Notice of Allowability is earnest solicited.

Respectfully submitted,

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